

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 5407 PCB JUAS 11-11 Juvenile Commitment

**SPONSOR(S):** Justice Appropriations Subcommittee, Glorioso

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee	13 Y, 0 N	Toms	Jones Darity
1) Appropriations Committee	21 Y, 0 N	Toms	Leznoff

### SUMMARY ANALYSIS

The bill conforms to the House of Representatives proposed Fiscal Year 2011-12 General Appropriations Act by amending s. 985.441, Florida Statutes.

Currently, courts may commit a child that has been adjudicated delinquent of a misdemeanor offense to a residential commitment facility.

The bill prohibits a court that has jurisdiction of an adjudicated delinquent child from committing a child adjudicated with any misdemeanor or probation violation, other than a new law violation constituting a felony where the underlying offense is a misdemeanor, at a restrictiveness level other than minimum-risk non-residential. The bill provides that a court may commit such child to a low-risk or moderate-risk residential placement for a misdemeanor if the child:

- Has previously been adjudicated for a felony offense;
- Has been adjudicated for four or more misdemeanor offenses within a year of the offense date of the offense before the court for disposition; or
- Is before the court for disposition for a violation of an offense relating to cruelty to animals, arson that results in injury to another or exposure of sexual organs.

The bill prohibits the Department of Juvenile Justice from transferring any child adjudicated solely for a misdemeanor to a residential program unless the child meets the above criteria.

The department estimates that approximately 976 fewer youth will be committed to residential facilities. This represents a savings of \$24.6 million to the General Revenue Fund. However, additional funding may be needed to allow the department to coordinate with communities to provide services in lieu of commitment.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Section 985.441, F.S., authorizes a court that has jurisdiction of an adjudicated delinquent child to commit the child to the Department of Juvenile Justice (DJJ) at a restrictiveness level defined in s. 985.03, F.S. Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, urine monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program.<sup>1</sup>

Section 985.03, F.S., defines the restrictiveness levels of residential commitment as follows:

##### **Low-risk residential**

- Programs or program models at this commitment level are residential but may allow youth to have unsupervised access to the community. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Youth assessed and classified for placement in programs at this commitment level represent a low risk to themselves and public safety but do require placement and services in residential settings. Children who have been found to have committed delinquent acts that involve firearms, delinquent acts that are sexual offenses or delinquent acts that would be life felonies or first degree felonies if committed by an adult shall not be committed to a program at this level.

##### **Moderate-risk residential**

- Programs or program models at this commitment level are residential but may allow youth to have supervised access to the community. Facilities are either environmentally secure, staff secure, or are hardware-secure with walls, fencing, or locking doors. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities shall provide 24-hour awake supervision, custody, care, and treatment of residents. Youth assessed and classified for placement in programs at this commitment level represent a moderate risk to public safety and require close supervision. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself or herself or others. Mechanical restraint may also be used when necessary.

##### **High-risk residential**

- Programs or program models at this commitment level are residential and do not allow youth to have access to the community, except that temporary release providing community access for up to 72 continuous hours may be approved by a

---

<sup>1</sup> Section 985.441, F.S.

court for a youth who has made successful progress in his or her program in order for the youth to attend a family emergency or, during the final 60 days of his or her placement, to visit his or her home, enroll in school or a vocational program, complete a job interview, or participate in a community service project. High-risk residential facilities are hardware-secure with perimeter fencing and locking doors. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities shall provide 24-hour awake supervision, custody, care, and treatment of residents. Youth assessed and classified for this level of placement require close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety that outweighs placement in programs at lower commitment levels. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself or herself or others. Mechanical restraint may also be used when necessary. The facility may provide for single cell occupancy.

#### Maximum-risk residential

- Programs or program models at this commitment level include juvenile correctional facilities and juvenile prisons. The programs are long-term residential and do not allow youth to have access to the community. Facilities are maximum-custody, hardware-secure with perimeter security fencing and locking doors. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities shall provide 24-hour awake supervision, custody, care, and treatment of residents. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself or herself or others. Mechanical restraint may also be used when necessary. The facility shall provide for single cell occupancy, except that youth may be housed together during prerelease transition. Youth assessed and classified for this level of placement require close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.

Currently, a child that has been adjudicated delinquent of a misdemeanor offense may be committed to the DJJ at any of the above-described restrictiveness levels.

#### **Effect of the Bill**

The bill specifies that the commitment of an adjudicated delinquent child to DJJ must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, monitoring for substance abuse, electronic monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program.

The bill also prohibits a court that has jurisdiction of an adjudicated delinquent child from committing a child adjudicated with any misdemeanor or probation violation, other than a new law violation constituting a felony where the underlying offense is a misdemeanor, at a

restrictiveness level other than minimum-risk non-residential.<sup>2</sup> The bill provides that a court may commit such child to a low-risk or moderate-risk residential placement if the child:

- Has previously been adjudicated for a felony offense;
- Has been adjudicated for four or more misdemeanor offenses within a year of the offense date of the offense before the court for disposition; or
- Is before the court for disposition for a violation of ss. 828.12,<sup>3</sup> s. 806.031,<sup>4</sup> or s. 800.03, F.S.<sup>5</sup>

The bill prohibits DJJ from transferring any child adjudicated solely for a misdemeanor to a residential program unless the child meets the above criteria.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 985.441, F.S., relating to commitment.

**Section 2.** Amends 985.0301, F.S., relating to jurisdiction

**Section 3.** Amends 985.033, F.S., relating to the right to counsel.

**Section 4.** Amends 985.46, F.S., relating to conditional release.

**Section 5.** The bill is effective July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See "Fiscal Comments"

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

---

<sup>2</sup> Section 985.03, F.S., defines "minimum-risk nonresidential" as "[P]rograms or program models at this commitment level work with youth who remain in the community and participate at least 5 days per week in a day treatment program. Youth assessed and classified for programs at this commitment level represent a minimum risk to themselves and public safety and do not require placement and services in residential settings. Youth in this level have full access to, and reside in, the community. Youth who have been found to have committed delinquent acts that involve firearms, that are sexual offenses or that would be life felonies or first degree felonies if committed by an adult may not be committed to a program at this level."

<sup>3</sup> Section 828.12, F.S., relates to cruelty to animals.

<sup>4</sup> Section 806.031, F.S., relates to arson that results in injury to another.

<sup>5</sup> Section 800.03, F.S., relates to exposure of sexual organs.

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Elimination of beds will result in the closure of contracted and state operated programs. The number and extent of such closures will be determined based on program performance.

**D. FISCAL COMMENTS:**

It is projected that the effect of the bill is a reduction to the General Revenue Fund. This reduction is based on serving approximately 976 fewer youth in residential commitment, and allows for time for youth to phase-out of the current system. This yields to a total savings of \$24.6 million to the General Revenue Fund and a reduction of 54 positions.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 23, 2011, the Justice Appropriations Subcommittee adopted an amendment to the bill and reported the bill favorably. The technical amendment corrects cross references.

This analysis is drafted to the bill as amended.